

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

DARREN GALES,)	
)	
Plaintiff,)	
)	
v.)	COMPLAINT AND DEMAND FOR JURY TRIAL
)	
STATE OF CALIFORNIA –)	
CALIFORNIA DEPARTMENT OF)	
CORRECTIONS AND REHABILITATION –)	
VENTURA YOUTH CORRECTIONAL)	
FACILITY,)	
)	
Defendant.)	
_____)	

Plaintiff, Darren Gales, brings this Complaint for damages and demand for a jury trial against Defendant, State of California – California Department of Corrections and Rehabilitation – Ventura Youth Correctional Facility (“CDCR”) and states as follows:

PARTIES

1. Plaintiff is a resident of the State of California and resides in Ventura County, California.

2. Defendant operates the Ventura Youth Correctional Facility in Ventura County, California.

3. At all times material hereto, Plaintiff was an “employee” of Defendant within the meaning of Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 (“Section 1981”); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended (“Title VII”); the California Fair Employment and Housing Act of 1959, Cal. Gov. Code §§ 12940, *et seq.* (“FEHA”); and Cal. Lab. Code § 1102.5.

4. At all times material hereto, Defendant was an “employer” under Section 1981, Title VII, the FEHA, and Cal. Lab. Code § 1102.5.

5. At all relevant times, Defendant maintained a workforce that employed at least 500 employees.

JURISDICTION

6. The jurisdiction of this court is invoked under Section 1981 and Title VII.

7. As such, the Court has original jurisdiction over this complaint under 28 U.S.C. §§ 1331 and 1337.

8. The Court has supplemental jurisdiction over Plaintiff’s FEHA, Cal. Lab. Code § 1102.5, Intentional Infliction of Emotional Distress (“IIED”) and Negligent Infliction of Emotional Distress (“NIED”) claims under 28 U.S.C. § 1367 as these claims are so related to Plaintiff’s Section 1981 and Title VII claims that they form part of the same case or controversy.

9. Jurisdiction to grant injunctive relief and declaratory relief, as well as damages is invoked under the Acts cited above as well as *Ex Parte Young*, 209 U.S. 123 (1908) under Plaintiff's request for prospective injunctive relief.

VENUE

10. The events described in this lawsuit primarily occurred in Ventura County, California.

11. Venue is proper in this Court under 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claims occurred within the Western Division of the Central District of California.

12. Defendant conducts substantial and not isolated business within the Western Division of the Central District of California.

13. Defendant has agents and employees in the Western Division of the Central District of California.

14. Defendant has a business located in the Western Division of the Central District of California.

CONDITIONS PRECEDENT

15. Plaintiff has exhausted his administrative remedies by filing charges of discrimination with the Equal Employment Opportunity Commission on July 10, 2017 and on May 18, 2018.

16. On March 12, 2019, the EEOC issued Plaintiff a Dismissal and Notice of Right to Sue against Defendant concerning this matter. A copy of this Right to Sue letter is attached as **Exhibits A**. Plaintiff files this action within the applicable period of limitations.

17. Plaintiff has been advised that the EEOC has issued the second right to sue letter, but has not received a copy of same at this time.

18. All conditions precedent to this action have been satisfied or waived.

STATEMENT OF FACTS

19. Darren Gales is an African-American male and veteran of the U.S. Army.

20. In June 2006, Mr. Gales began his employment with the Ventura Youth Correctional Facility as a Property Controller 1, which is part of the Procurement Department.

21. Throughout his employment, Mr. Gales has never received a negative performance evaluation.

22. In 2017, Mr. Gales was the only African-American employee that worked at the Procurement Department of Ventura Youth Correctional Facility.

23. Throughout the duration of his employment, Mr. Gales was discriminated against, harassed, and made to endure a hostile work environment because of his race.

24. For example, inmates at CDCR repeatedly referred to Mr. Gales as a “nigger.”

25. Scott Boucher was employed by CDCR as a Building Maintenance Worker and coworker of Mr. Gales.

26. On or about May 27, 2017, Mr. Boucher displayed a noose in front of Mr. Gales.

27. After directing Mr. Gales’ attention towards the noose, Mr. Boucher threw the noose over a light fixture and hung the noose in a manner Mr. Gales describes as one being used for the “lynching of blacks in the slavery period.”

28. Mr. Boucher then threatened Mr. Gales and advised him that “someone or something needs to be hanged today.”

29. On or about May 30, 2017, Mr. Gales reported the noose incident and related “hanging” comment to his direct Supervisor Robert Facundus and Facility EEO Coordinator Cynthia Brown.

30. On that day, Mr. Gales also filed an EEO CDCR Form 693 (“Discrimination Complaint”) and an incident report.

31. A request for investigation was submitted to CDCR’s Office of Internal Affairs on or about May 30, 2017.

32. To this date, Mr. Gales has not received a response to his Discrimination Complaint from Department Supervisor/Correctional Business

Services Officer John Branch, Superintendent Maria Harper, or Assistant Superintendent Kenny Fewer.

33. On or about June 7, 2017, Mr. Gales overheard Mr. Branch, Mr. Boucher, and a Service Employees International Union (“SEIU”) Representative discussing the noose and hanging comment incident.

34. During that conversation, Mr. Gales heard Mr. Branch state that he would “support Scott (Boucher).”

35. That same day, Mr. Gales reported the conversation he overheard to Facility EEO Coordinator Brown.

36. During that conversation, Mr. Gales informed Ms. Brown that the noose incident and hanging comment had caused him significant emotional distress and that he needed to leave work for the day to consult with his physician.

37. Mr. Gales visited his physician, who advised him not to return to work until June 27, 2017 due to the extreme stress and anxiety he suffered due to the incident.

38. The following business day, Mr. Gales promptly advised Mr. Facundus that he needed to be placed on leave through June 27, 2017.

39. Through a series of subsequent visits, Mr. Gales’ physician recommended Mr. Gales extend his medical leave until January 2018 due to the continued emotional distress Mr. Gales suffered as a result of the discrimination.

40. Each time Mr. Gales' primary care physician recommended extending his leave, Mr. Gales promptly informed Defendant of his physician's orders.

41. On July 10, 2017, Mr. Gales filed charges of discrimination with Equal Employment Opportunity Commission, the California Department of Fair Housing and Employment ("DFEH"), California State Labor Board ("SLB"), the CDCR Office of Internal Affairs ("OIA"), and the California Office for Civil Rights ("OCR").

42. Before filing his first EEOC Charge in July 2017, Mr. Boucher had not been reprimanded for his horrendous race discrimination, which included showing Mr. Gales a noose and advising him that "someone or something needs to be hanged today."

43. On or about December 12, 2017, Defendant filed a position statement with the EEOC responding to Mr. Gales' first EEOC Charge regarding the noose incident and "hanging" comment.

44. In its position statement, Defendant admitted that "[b]ased on all available facts...the allegation of discrimination was substantiated and resulted in a violation of CDCR's EEO policy."

45. On or about December 27, 2017, Staff Services Manager I, Leslie Zuniga, e-mailed Mr. Gales acknowledging receipt of correspondence from Mr.

Gales' physician regarding his ability to return to work on January 2, 2018, and a recommendation of "no contact" with Boucher.

46. When Mr. Gales returned to work on January 2, 2018, Defendant began retaliating against Mr. Gales because he objected to race discrimination and participated in the EEOC investigations.

47. Specifically, Mr. Facundus advised Mr. Gales that his responsibilities were being "revised", and that he was assigned to "desk responsibilities."

48. Moreover, on January 11, 2018, Mr. Facundus advised Mr. Gales that Return to Work Manager/ Health and Safety Officer Seth Hawkins instructed Mr. Facundus to monitor Mr. Gales' movement throughout the facility.

49. In the same conversation, Mr. Facundus further instructed Mr. Gales that if he was stepping away from his desk, he was to inform Mr. Facundus.

50. Furthermore, on or about January 17, 2018, Mr. Gales received a retroactive "Notice of Personnel Action" dated January 9, 2018 stating that he had been taken off insurance and was separated from state service as of July 2017, interfering with his ability to "accumulate credit for retirement service, state service, seniority, vacation, sick leave or salary adjustments"

51. Additionally, on or about January 19, 2018, Mr. Gales was issued a "Work Improvement Discussion ("WID") Memorandum" related to an alleged

incident that took place on February 27, 2017 regarding Mr. Gales' interaction with a ward housed at the facility.

52. On or about February 16, 2018, Mr. Gales responded to the September 2017 WID, noting that the WID (1) was issued well outside of SEIU's Local 1000 Contract's mandate that a WID "shall be issued in a timely fashion, generally within thirty (30) days from when the incident occurred; and (2) that he was not notified of or interviewed in connection with the alleged incident.

53. On or about February 23, 2018, Senior Youth Counselor Cynthia Lee sent a memorandum to Mr. Gales regarding her recollection of the meeting concerning the February 2017 "incident," which concluded that the ward "told D. Gales that he was sorry for all of the derogatory and disrespectful comments made towards [Mr. Gales...and] the staffing meeting ended with [the ward] and D. Gales shaking hands."

54. As a result of Defendant's racially motivated discrimination, retaliation, and the hostile work environment that Mr. Gales was made to endure, Mr. Gales has been diagnosed with Post-Traumatic Stress Disorder.

55. From June 16, 2017 to present, except for January 2, 2018 to February 7, 2018, Mr. Gales has not been able to return to work, primarily due to the post-traumatic distress he continues to experience as a result of the horrendous discrimination, retaliation, and/or hostile work environment that he was made to

endure.

56. From June 16, 2017 to present, Mr. Gales has been denied the opportunity for promotions, training for promotions, the accumulation of credit for retirement, seniority, vacation time, sick leave, and raises, and benefits, amongst other things.

**COUNT I – RACE DISCRIMINATION IN VIOLATION OF
42 U.S.C. § 1981**

57. Plaintiff realleges and incorporates paragraphs 1-56 herein.

58. Defendant's conduct constitutes unlawful discrimination based upon race, in violation of 42 U.S.C. § 1981.

59. The actions of Defendant alleged above were intentionally and purposefully done to Plaintiff because of his race.

60. Defendant subjected Plaintiff to racial discrimination, including denying him the opportunity for promotions, training for promotions, the accumulation of credit for retirement, seniority, vacation time, sick leave, raises, and benefits, amongst other things, and by subjecting him to surveillance, issuing untimely and unwarranted discipline, and an otherwise hostile work environment based on race.

61. Defendant's discriminatory actions were willful, deliberate, and intentional.

62. The injuries to Plaintiff that arose as a consequence of Defendant's

conduct were foreseeable and intentionally caused by Defendant.

63. As a direct and proximate result of the Defendant's violations of 42 U.S.C. § 1981, Plaintiff suffered economic damages including but not limited to, loss of wages, loss of benefits, back pay, front pay including the loss or decrease of Plaintiff's pension and other retirement benefits, and other expenses.

64. As a direct and proximate result of Defendant's violations of 42 U.S.C. § 1981, Plaintiff has suffered emotional and physical distress, mental and physical anguish, loss of reputation, humiliation, and embarrassment and the physical effects associated therewith, and will so suffer in the future.

65. As a direct, natural, proximate and foreseeable result of the actions of Defendant, Plaintiff has suffered injuries for which he is entitled to compensation, including, but not limited to, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

66. As a result of Defendant's violations of 42 U.S.C. § 1981, Plaintiff has suffered irreparable harm for which there is no plain, adequate or complete remedy at law.

67. Plaintiff is entitled to recover reasonable attorneys' fees and litigation expenses pursuant to 42 U.S.C. § 1981.

**COUNT II –HARASSMENT BASED ON RACE IN VIOLATION OF
42 U.S.C. § 1981**

68. Plaintiff realleges and incorporates paragraphs 1-56 herein.

69. Defendant subjected Plaintiff to racial harassment including denying him promotions, pay raises, benefits, training, and by subjecting him to surveillance, issuing untimely and unwarranted discipline, and an otherwise hostile work environment based on race and complaint of racial discrimination.

70. Defendant's conduct constitutes unlawful harassment based upon race and Plaintiff's complaints of racial discrimination, in violation of 42 U.S.C. § 1981.

71. Defendant's harassing actions were willful, deliberate, and intentional.

72. The injuries to Plaintiff that arose as a consequence of Defendant's conduct were foreseeable and intentionally caused by Defendant.

73. As a direct and proximate result of the Defendant's violations of 42 U.S.C. § 1981, Plaintiff suffered economic damages including but not limited to, loss of wages, loss of benefits, back pay, front pay including the loss or decrease of Plaintiff's pension and other retirement benefits, and other expenses.

74. As a direct and proximate result of Defendant's violations of 42 U.S.C. § 1981, Plaintiff has suffered emotional and physical distress, mental and physical anguish, loss of reputation, humiliation, and embarrassment and the physical effects associated therewith, and will so suffer in the future.

75. As a direct, natural, proximate and foreseeable result of the actions of Defendant, Plaintiff has suffered injuries for which he is entitled to compensation, including, but not limited to, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

76. As a result of Defendant's violations of 42 U.S.C. § 1981, Plaintiff has suffered irreparable harm for which there is no plain, adequate or complete remedy at law.

77. Plaintiff is entitled to recover reasonable attorneys' fees and litigation expenses pursuant to 42 U.S.C. § 1981.

**COUNT III –RETALIATION BASED ON RACE IN VIOLATION OF
42 U.S.C. § 1981**

78. Plaintiff realleges and incorporates paragraphs 1-56 herein.

79. Defendant subjected Plaintiff to racial retaliation, including denying him the opportunity for promotions, training for promotions, the accumulation of credit for retirement, seniority, vacation time, sick leave, raises, and benefits, amongst other things, and by subjecting him to surveillance, issuing untimely and unwarranted discipline, and an otherwise retaliatory hostile work environment based on race and/or Plaintiff's objection to racial discrimination/harassment.

80. Defendant's conduct constitutes unlawful retaliation based upon Plaintiff's complaints of racial discrimination, in violation of 42 U.S.C. § 1981.

81. Defendant's retaliatory actions were willful, deliberate, and intentional.

82. The injuries to Plaintiff that arose as a consequence of Defendant's conduct were foreseeable and intentionally caused by Defendant.

83. As a direct and proximate result of the Defendant's violations of 42 U.S.C. § 1981, Plaintiff suffered economic damages including but not limited to, loss of wages, loss of benefits, back pay, front pay including the loss or decrease of Plaintiff's pension and other retirement benefits, and other expenses.

84. As a direct and proximate result of Defendant's violations of 42 U.S.C. § 1981, Plaintiff has suffered emotional and physical distress, mental and physical anguish, loss of reputation, humiliation, and embarrassment and the physical effects associated therewith, and will so suffer in the future.

85. As a direct, natural, proximate and foreseeable result of the actions of Defendant, Plaintiff has suffered injuries for which he is entitled to compensation, including, but not limited to, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

86. As a result of Defendant's violations of 42 U.S.C. § 1981, Plaintiff has suffered irreparable harm for which there is no plain, adequate or complete remedy at law.

87. Plaintiff is entitled to recover reasonable attorneys' fees and litigation expenses pursuant to 42 U.S.C. § 1981.

**COUNT IV – RACE DISCRIMINATION IN VIOLATION OF
TITLE VII**

88. Plaintiff realleges and incorporates paragraphs 1-56 herein.

89. Defendant subjected Plaintiff to racial discrimination, including denying him the opportunity for promotions, training for promotions, the accumulation of credit for retirement, seniority, vacation time, sick leave, raises, and benefits, amongst other things, and by subjecting him to surveillance, issuing untimely and unwarranted discipline, and an otherwise hostile work environment based on race.

90. Defendant's conduct constitutes unlawful discrimination based upon race in violation of Title VII.

91. Defendant's discriminatory actions were willful, deliberate, and intentional.

92. The injuries to Plaintiff that arose as a consequence of Defendant's conduct were foreseeable and intentionally caused by Defendant.

93. As a direct and proximate result of the Defendant's violations of Title VII, Plaintiff suffered economic damages including but not limited to, loss of wages, loss of benefits, back pay, front pay including the loss or decrease of Plaintiff's pension and other retirement benefits, and other expenses.

94. As a direct and proximate result of Defendant's violations of Title VII, Plaintiff has suffered emotional and physical distress, mental and physical anguish, loss of reputation, humiliation, and embarrassment and the physical effects associated therewith, and will so suffer in the future.

95. As a direct, natural, proximate and foreseeable result of the actions of Defendant, Plaintiff has suffered injuries for which he is entitled to compensation, including, but not limited to, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

96. As a result of Defendant's violations of Title VII, Plaintiff has suffered irreparable harm for which there is no plain, adequate or complete remedy at law.

97. Plaintiff is entitled to recover reasonable attorneys' fees and litigation expenses pursuant to Title VII.

**COUNT V – HARASSMENT BASED ON RACE IN VIOLATION OF
TITLE VII**

98. Plaintiff realleges and incorporates paragraphs 1-56 herein.

99. Defendant subjected Plaintiff to racial harassment including denying him promotions, pay raises, benefits, training, and by subjecting him to surveillance, issuing untimely and unwarranted discipline, and an otherwise hostile work environment based on race and complaint of racial discrimination.

100. Defendant's conduct constitutes unlawful discrimination based upon race and Plaintiff's complaints of racial discrimination, in violation of Title VII.

101. Defendant's harassing actions were willful, deliberate, and intentional.

102. The injuries to Plaintiff that arose as a consequence of Defendant's conduct were foreseeable and intentionally caused by Defendant.

103. As a direct and proximate result of the Defendant's violations of Title VII, Plaintiff suffered economic damages including but not limited to, loss of wages, loss of benefits, back pay, front pay including the loss or decrease of Plaintiff's pension and other retirement benefits, and other expenses.

104. As a direct and proximate result of Defendant's violations of Title VII, Plaintiff has suffered emotional and physical distress, mental and physical anguish, loss of reputation, humiliation, and embarrassment and the physical effects associated therewith, and will so suffer in the future.

105. As a direct, natural, proximate and foreseeable result of the actions of Defendant, Plaintiff has suffered injuries for which he is entitled to compensation, including, but not limited to, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

106. As a result of Defendant's violations of Title VII, Plaintiff has

suffered irreparable harm for which there is no plain, adequate or complete remedy at law.

107. Plaintiff is entitled to recover reasonable attorneys' fees and litigation expenses pursuant to Title VII.

**COUNT VI – RETALIATION BASED ON RACE IN VIOLATION OF
TITLE VII**

108. Plaintiff realleges and incorporates paragraphs 1-56 herein.

109. Defendant subjected Plaintiff to racial retaliation, including denying him the opportunity for promotions, training for promotions, the accumulation of credit for retirement, seniority, vacation time, sick leave, raises, and benefits, amongst other things, and by subjecting him to surveillance, issuing untimely and unwarranted discipline, and an otherwise hostile work environment based on race.

110. Defendant's conduct constitutes unlawful retaliation based upon Plaintiff's complaints of racial discrimination in violation of Title VII.

111. Defendant's retaliatory actions were willful, deliberate, and intentional.

112. The injuries to Plaintiff that arose as a consequence of Defendant's conduct were foreseeable and intentionally caused by Defendant.

113. As a direct and proximate result of the Defendant's violations of Title VII, Plaintiff suffered economic damages including but not limited to, loss of wages, loss of benefits, back pay, front pay including the loss or decrease of

Plaintiff's pension and other retirement benefits, and other expenses.

114. As a direct and proximate result of Defendant's violations of Title VII, Plaintiff has suffered emotional and physical distress, mental and physical anguish, loss of reputation, humiliation and embarrassment and the physical effects associated therewith, and will so suffer in the future.

115. As a direct, natural, proximate and foreseeable result of the actions of Defendant, Plaintiff has suffered injuries for which he is entitled to compensation, including, but not limited to, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

116. The actions of Defendant are in willful and wonton disregard of the rights of Plaintiff so as to entitle Plaintiff to an award of punitive damages against Defendant to punish it for its conduct and to deter it and others from such conduct in the future.

117. As a result of Defendant's violations of Title VII, Plaintiff has suffered irreparable harm for which there is no plain, adequate or complete remedy at law.

118. Plaintiff is entitled to recover reasonable attorneys' fees and litigation expenses pursuant to Title VII.

**COUNT VII – RACE DISCRIMINATION IN VIOLATION OF
THE FEHA**

119. Plaintiff realleges and incorporates paragraphs 1-56 herein.

120. Defendant subjected Plaintiff to racial discrimination, including denying him the opportunity for promotions, training for promotions, the accumulation of credit for retirement, seniority, vacation time, sick leave, raises, and benefits, amongst other things, and by subjecting him to surveillance, issuing untimely and unwarranted discipline, and an otherwise hostile work environment based on race.

121. Defendant's conduct constitutes unlawful discrimination based upon race in violation of the FEHA.

122. Defendant's discriminatory actions were willful, deliberate, and intentional.

123. The injuries to Plaintiff that arose as a consequence of Defendant's conduct were foreseeable and intentionally caused by Defendant.

124. As a direct and proximate result of the Defendant's violations of the FEHA, Plaintiff suffered economic damages including but not limited to, loss of wages, loss of benefits, back pay, front pay including the loss or decrease of Plaintiff's pension and other retirement benefits, and other expenses.

125. As a direct and proximate result of Defendant's violations of the FEHA, Plaintiff has suffered emotional and physical distress, mental and physical anguish, loss of reputation, humiliation, and embarrassment and the physical effects

associated therewith, and will so suffer in the future.

126. As a direct, natural, proximate and foreseeable result of the actions of Defendant, Plaintiff has suffered injuries for which he is entitled to compensation, including, but not limited to, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

127. As a result of Defendant's violations of the FEHA, Plaintiff has suffered irreparable harm for which there is no plain, adequate or complete remedy at law.

128. Plaintiff is entitled to recover reasonable attorneys' fees and litigation expenses pursuant to the FEHA.

**COUNT VIII – HARASSMENT BASED ON RACE IN VIOLATION OF
THE FEHA**

129. Plaintiff realleges and incorporates paragraphs 1-56 herein.

130. Defendant subjected Plaintiff to racial harassment including denying him promotions, pay raises, benefits, training, and by subjecting him to surveillance, issuing untimely and unwarranted discipline, and an otherwise hostile work environment based on race and complaint of racial discrimination.

131. Defendant's conduct constitutes unlawful discrimination based upon race and Plaintiff's complaints of racial discrimination, in violation of the FEHA.

132. Defendant's harassing actions were willful, deliberate, and

intentional.

133. The injuries to Plaintiff that arose as a consequence of Defendant's conduct were foreseeable and intentionally caused by Defendant.

134. As a direct and proximate result of the Defendant's violations of the FEHA, Plaintiff suffered economic damages including but not limited to, loss of wages, loss of benefits, back pay, front pay including the loss or decrease of Plaintiff's pension and other retirement benefits, and other expenses.

135. As a direct and proximate result of Defendant's violations of the FEHA, Plaintiff has suffered emotional and physical distress, mental and physical anguish, loss of reputation, humiliation, and embarrassment and the physical effects associated therewith, and will so suffer in the future.

136. As a direct, natural, proximate and foreseeable result of the actions of Defendant, Plaintiff has suffered injuries for which he is entitled to compensation, including, but not limited to, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

137. As a result of Defendant's violations of the FEHA, Plaintiff has suffered irreparable harm for which there is no plain, adequate or complete remedy at law.

138. Plaintiff is entitled to recover reasonable attorneys' fees and

litigation expenses pursuant to the FEHA.

**COUNT IX – RETALIATION BASED ON RACE IN VIOLATION OF
THE FEHA**

139. Plaintiff realleges and incorporates paragraphs 1-56 herein.

140. Defendant subjected Plaintiff to racial retaliation, including denying him the opportunity for promotions, training for promotions, the accumulation of credit for retirement, seniority, vacation time, sick leave, raises, and benefits, amongst other things, and by subjecting him to surveillance, issuing untimely and unwarranted discipline, and an otherwise hostile work environment based on race.

141. Defendant's conduct constitutes unlawful retaliation based upon Plaintiff's complaints of racial discrimination, in violation of the FEHA.

142. Defendant's retaliatory actions were willful, deliberate, and intentional.

143. The injuries to Plaintiff that arose as a consequence of Defendant's conduct were foreseeable and intentionally caused by Defendant.

144. As a direct and proximate result of the Defendant's violations of the FEHA, Plaintiff suffered economic damages including but not limited to, loss of wages, loss of benefits, back pay, front pay including the loss or decrease of Plaintiff's pension and other retirement benefits, and other expenses.

145. As a direct and proximate result of Defendant's violations of the FEHA, Plaintiff has suffered emotional and physical distress, mental and physical

anguish, loss of reputation, humiliation, and embarrassment and the physical effects associated therewith, and will so suffer in the future.

146. As a direct, natural, proximate and foreseeable result of the actions of Defendant, Plaintiff has suffered injuries for which he is entitled to compensation, including, but not limited to, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

147. As a result of Defendant's violations of the FEHA, Plaintiff has suffered irreparable harm for which there is no plain, adequate or complete remedy at law.

148. Plaintiff is entitled to recover reasonable attorneys' fees and litigation expenses pursuant to the FEHA.

**COUNT X – RETALIATION FOR DISCLOSING UNLAWFUL ACTS
IN VIOLATION OF CAL. LAB. CODE 1102.5**

149. Plaintiff realleges and incorporates paragraphs 1-56 herein.

150. At all times alleged herein, California Labor Code § 1102.5 was in full effect and binding on Defendant.

151. Pursuant to California Labor Code § 1102.5, Plaintiff had a legal right to disclose unlawful acts to those with authority to investigate, discover or correct such violations without retaliation from Defendant.

152. Plaintiff reported and disclosed unlawful acts prohibited by FEHA,

the Labor Code, 42 U.S.C. § 1981, and Title VII, among other laws, to managers and superiors employed by Defendant.

153. Defendant subjected Plaintiff to racial retaliation, including denying him the opportunity for promotions, training for promotions, the accumulation of credit for retirement, seniority, vacation time, sick leave, raises, and benefits, amongst other things, and by subjecting him to surveillance, issuing untimely and unwarranted discipline, and an otherwise hostile work environment based on race.

154. Defendant's conduct constitutes unlawful retaliation based upon Plaintiff's complaints of racial discrimination, in violation of California Labor Code § 1102.5.

155. Defendant's retaliatory actions were willful, deliberate, and intentional.

156. The injuries to Plaintiff that arose as a consequence of Defendant's conduct were foreseeable and intentionally caused by Defendant.

157. As a direct and proximate result of the Defendant's violations of California Labor Code § 1102.5, Plaintiff suffered economic damages including but not limited to, loss of wages, loss of benefits, back pay, front pay including the loss or decrease of Plaintiff's pension and other retirement benefits, and other expenses.

158. As a direct and proximate result of Defendant's violations of

California Labor Code § 1102.5, Plaintiff has suffered emotional and physical distress, mental and physical anguish, loss of reputation, humiliation, and embarrassment and the physical effects associated therewith, and will so suffer in the future.

159. As a direct, natural, proximate and foreseeable result of the actions of Defendant, Plaintiff has suffered injuries for which he is entitled to compensation, including, but not limited to, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

160. As a result of Defendant's violations of California Labor Code § 1102.5, Plaintiff has suffered irreparable harm for which there is no plain, adequate or complete remedy at law

COUNT XI – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

161. Plaintiff realleges and incorporates paragraphs 1- 56 herein.

162. The conduct complained of was outside the conduct expected to exist in the workplace, was intentional and malicious and done to cause Plaintiff to suffer humiliation, mental anguish, and emotional and physical distress.

163. In confirming and ratifying the complained of conduct, Defendant's conduct was done with the knowledge that Plaintiff's emotional and physical distress would thereby increase, and was done with a wanton and reckless

disregard of the consequences to Plaintiff.

164. As a proximate result of Defendant's conduct and by their intentional infliction of emotional distress as alleged herein, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish, and emotional and physical sickness, and has been injured in mind and health.

165. As a result of said distress and consequent harm, Plaintiff has suffered such damages in an amount proven at time of trial.

166. Defendant authorized, ratified, knew of the wrongful conduct complained of herein, but failed to take immediate and appropriate corrective action to remedy the situation, and engaged in further wrongful conduct, thereby acted fraudulently, maliciously, oppressively and with reckless disregard of Plaintiff's rights and safety, and thereby entitling Plaintiff to an award of punitive damages.

COUNT VIII – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

167. Plaintiff realleges and incorporates paragraphs 1-56 and 161-166 herein.

168. In the alternative, if said conduct of Defendant, and each of them, and their agents and employees was not intentional, it was negligent, and Plaintiff is thereby entitled to general damages and all other damages available for the negligent infliction of emotional distress.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for damages in an amount to be determined at trial, together with interest, cost of suit, attorneys' fees, and all such other relief as the court deems just and proper which include:

a. Declare that the aforementioned practices and actions of Defendant constitute unlawful employment practices in violation of Section 1981, Title VII, FEHA, and Cal. Lab. Code § 1102.5;

b. Award Plaintiff all lost wages, past and future, including the loss or decrease of Plaintiff's pension and other retirement benefits, and other monetary damages to which he is entitled to including interest;

c. Award Plaintiff compensatory and punitive damages;

d. Award Plaintiff reasonable attorney's fees, costs, and interest;

e. Award Plaintiff equitable relief including, but not limited to: an injunction directing Defendant to cease their discriminatory conduct and practices; full reinstatement to her employment and position with Defendant; and

f. Award all other relief as this Court deems just and proper and any other relief afforded under the Section 1981, Title VII, FEHA, and Cal. Lab. Code § 1102.5, and for Plaintiff's IIED and NIED common law claims.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated this 10th day of June, 2019.

By: /s/ Michael N. Hanna

MORGAN & MORGAN, P.A.

MICHAEL N. HANNA (*pro hac vice*)

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